

AMENDED IN SENATE JUNE 13, 2016

AMENDED IN ASSEMBLY APRIL 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1922

Introduced by Assembly Member Daly

February 11, 2016

An act to amend Section 11658 of the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1922, as amended, Daly. Workers' compensation ~~policies~~: *policies: ancillary agreements*.

Existing law requires that *prohibits* a workers' compensation insurance policy or endorsement ~~not be from being~~ issued by an insurer unless the insurer files a copy of the form or endorsement with a rating organization and 30 days have expired from the date the form or endorsement is received by the Insurance Commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would prohibit, except as provided, an ancillary ~~agreement~~ *agreement, as defined*, to a workers' compensation insurance policy from being issued or renewed by an insurer to a California employer, as defined, ~~on or after January 1, 2017~~, unless the insurer files a copy of the ancillary agreement with a rating organization and 30 days have expired from the date the ancillary agreement is received by the commissioner from the rating organization without notice from the commissioner unless the commissioner gives written approval of the

ancillary agreement prior to that time. ~~The bill would define “ancillary agreement” to mean an agreement that is a supplementary writing or contract relating to a policy or endorsement form that adds to, subtracts from, or revises the obligations of either the insured or the insurer regarding any terms of an insurance policy, including, but not limited to, dispute resolution agreements, policy premium amounts or rates, expense or tax reimbursement or allocation, deductible amounts, policy duration, cancellation, or claims administration. The bill would provide that the terms and conditions of a workers’ compensation policy and any endorsements take precedence over the provisions contained in an ancillary agreement in the case of an inconsistency or conflict between the policy or endorsement and the ancillary agreement. The changes made by the bill would apply to ancillary agreements issued or renewed on or after January 1, 2017.~~ The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11658 of the Insurance Code is amended
- 2 to read:
- 3 11658. (a) A workers’ compensation insurance policy or
- 4 endorsement shall not be issued by an insurer to any person in this
- 5 state unless the insurer files a copy of the form or endorsement
- 6 with the rating organization pursuant to subdivision (e) of Section
- 7 11750.3 and 30 days have expired from the date the form or
- 8 endorsement is received by the commissioner from the rating
- 9 organization without notice from the commissioner, unless the
- 10 commissioner gives written approval of the form or endorsement
- 11 prior to that time.
- 12 (b) (1) An ancillary agreement shall not be issued by an insurer
- 13 to a California employer unless the insurer files a copy of the
- 14 ancillary agreement with the rating organization pursuant to
- 15 subdivision (e) of Section 11750.3 and 30 days have expired from
- 16 the date the ancillary agreement is received by the commissioner
- 17 from the rating organization without notice from the commissioner
- 18 unless the commissioner gives written approval of the ancillary
- 19 agreement prior to that time.

(2) For the purposes of this section, a “California employer” means an employer whose principal place of business is in California and whose California payroll constitutes the majority of the employer’s payroll for purposes of determining premium under the policy.

(3) (A) This section shall not apply to an ancillary agreement between an insurer and a California employer issued in conjunction with a workers’ compensation policy or endorsement that contains a deductible obligation or retention obligation equal to or greater than two hundred fifty thousand dollars (\$250,000) and the California employer meets three or more of the following criteria: ~~(A)~~ (i) has a full-time risk ~~manager~~; ~~(B)~~ *manager involved in the evaluation of an ancillary agreement*; (ii) is represented by counsel during ~~negotiations~~; ~~(C)~~ *negotiations regarding an ancillary agreement*; (iii) has 500 or more employees; ~~(D)~~ (iv) has annual gross ~~revenue~~ *revenues* in excess of twenty million dollars (\$20,000,000); or ~~(E)~~ (v) has a workers’ compensation manual standard premium on a countrywide basis in excess of seven hundred fifty thousand dollars (\$750,000).

(B) *Paragraph (1) shall control, and paragraph (3) shall not apply, to an ancillary agreement between an insurer and a California employer that is either of the following:*

(i) *Issued to a coemployment arrangement, as defined in subparagraph (C).*

(ii) *Negotiated, managed, or administered, in whole or in part, by a managing general agent (MGA), as defined in subdivision (c) of Section 769.81.*

(C) *“Coemployment arrangement” means any arrangement, under contract or otherwise, whereby an entity utilizes the services of a third party to provide workers for a fee or other compensation, including, but not limited to:*

(i) *A professional employer organization.*

(ii) *A leasing employer, as defined in Section 606.5 of the Unemployment Insurance Code.*

(iii) *A temporary services employer, as defined in Section 606.5 of the Unemployment Insurance Code.*

(iv) *Any employer, regardless of name or form of organization, that is in the business of providing workers to other employers.*

(4) Under no circumstances, however, may an ancillary agreement amend or revise the coverage provided, or the benefits

1 payable, under a workers' compensation policy unless it is filed
2 and approved in accordance with this section. *The terms and*
3 *conditions of a workers' compensation policy and any*
4 *endorsements shall take precedence over the provisions contained*
5 *in an ancillary agreement if there is an inconsistency or a conflict*
6 *between the policy or endorsement and the ancillary agreement.*

7 (5) This subdivision shall apply to ancillary agreements issued
8 or renewed on or after January 1, 2017.

9 (c) If the commissioner notifies the insurer that the filed policy
10 form, endorsement, or ancillary agreement does not comply with
11 the requirements of law, specifying the reasons for his or her
12 opinion, it is unlawful for the insurer to issue any policy form,
13 endorsement, or ancillary agreement in that form.

14 (d) The withdrawal of a policy form, endorsement, or ancillary
15 agreement by the commissioner pursuant to this section shall not
16 affect the status of the policyholder as having secured payment
17 for compensation or affect the substitution of the insurer for the
18 policyholder in workers' compensation proceedings as set forth
19 in the provisions of Chapter 4 (commencing with Section 3700)
20 of Part 1 of Division 4 of the Labor Code during the period of time
21 in which the policy form, endorsement, or ancillary agreement
22 was in effect.

23 (e) "Ancillary agreement" means an agreement that is a
24 supplementary writing or contract relating to a policy or
25 endorsement form that adds to, subtracts from, or revises the
26 obligations of either the insured or the insurer regarding any terms
27 of an insurance policy, including, but not limited to, dispute
28 resolution agreements, policy premium amounts or rates, expense
29 or tax reimbursement or allocation, deductible amounts, policy
30 duration, cancellation, or claims administration. "Ancillary
31 agreements" do not include: (1) limiting and restricting
32 endorsements as defined in subdivision (g) of this section; (2)
33 customized limiting and restricting endorsements as defined in
34 subdivision (h) of this section; or (3) agreements specifying only
35 terms described in subparagraphs (A) to (F), inclusive, following,
36 but only if those terms are disclosed and negotiated
37 contemporaneously with the inception or renewal of the underlying
38 policy and any revisions or additions to those terms subsequent to
39 the inception or renewal of the policy are mutually agreed upon
40 by the parties: (A) the method for making payments; (B) the

1 method for funding deductible amounts or other policy-related
2 charges due under a policy; (C) the amounts of collateral or security
3 the insured is required to maintain for claims that do not exceed
4 the deductible; (D) payment due dates; (E) payment transmittal
5 information; or (F) the method of selecting a claims administrator,
6 provided that the claims administrator may only administer claims
7 that do not exceed the deductible.

8 (f) This section shall not apply to limited policies submitted for
9 approval to the commissioner pursuant to Section 11657.

10 (g) "Limiting and restricting endorsement" means an
11 endorsement that excludes from coverage some portion of workers'
12 compensation liability for which the employer is required to secure
13 payment pursuant to the Labor Code that, after approval of the
14 endorsement by the Insurance Commissioner, may be endorsed to
15 a workers' compensation policy.

16 (h) "Customized limiting and restricting endorsement" means
17 an endorsement unique to a specific policy used (1) when the
18 employer's business is conducted in such a manner that it is
19 impossible or impracticable to determine the nature, scope, and
20 extent of employment covered by the insurer; or (2) to prevent the
21 performance of work in such an extremely hazardous manner or
22 under such hazardous conditions as would reflect a reckless
23 disregard by the employer for the welfare of its employees; or (3)
24 to prevent the issuance of an unrestricted policy if it would
25 encourage an operation that is contrary to law or to the rules of a
26 regulatory agency.